

MINUTES

CASE NUMBER: CV 18-00125 HG-RT

CASE NAME: Andrew Namiki Roberts vs. Russell Suzuki,
in his official capacity as the Attorney
General of the State of Hawaii; Al
Cummings, in his official capacity as the
State Sheriff Division Administrator

ATTYS FOR PLA: Alan A. Beck, Esquire
Stephen D. Stamboulieh, Esquire

ATTY FOR DEFT: John M. Cregor, Jr., Esquire

AMICUS CURIAE: Pamela W. Bunn, Esquire
William James Taylor, Jr., Esquire,
participated by telephone

JUDGE: Helen Gillmor

REPORTER: Debi Read

DATE: 11/26/2019

TIME: 10:30am-11:25am

COURT ACTION: EP: PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT (ECF No. 51);

DEFENDANTS RUSSELL A. SUZUKI AND
AL CUMMINGS' CROSS-CLAIM FOR
SUMMARY JUDGMENT (ECF No. 54);

and

MOTION FOR LEAVE TO FILE BRIEF
OF EVERYTOWN FOR GUN SAFETY
SUPPORT FUND AS AMICUS CURIAE
(ECF No. 62)

Discussion held.

I. Amicus Curiae

Amicus Curiae Everytown For Gun Safety Support Fund filed a pleading entitled, "CONSENT MOTION FOR LEAVE TO FILE BRIEF OF EVERYTOWN FOR GUN SAFETY SUPPORT FUND AS AMICUS CURIAE." (ECF No. 62).

Everytown For Gun Safety Support Fund attached a copy of their Proposed Brief to the Motion. (ECF NO. 62-1).

Plaintiff Andrew Namiki Roberts does not oppose the Motion For Leave.

Defendants Russell Suzuki, in his Official Capacity as the Attorney General of the State of Hawaii, and Al Cummings, in his Official Capacity as the State Sheriff Division Administrator do not oppose the Motion For Leave.

CONSENT MOTION FOR LEAVE TO FILE BRIEF OF EVERYTOWN FOR GUN SAFETY SUPPORT FUND AS AMICUS CURIAE (ECF No. 62) is **GRANTED**.

The Brief (ECF No. 62-1) attached to the Motion is deemed filed and is part of the record.

II. Proceedings Before This Court

Plaintiff filed a Complaint claiming that Hawaii Revised Statutes § 134-1 violates the Second Amendment to the United States Constitution. Haw. Rev. Stat. § 134-1 limits the sale of electric guns in the State of Hawaii.

Each Party has filed a Motion for Summary Judgment. (ECF Nos. 51, 54).

The Parties' briefing on their Motions for Summary Judgment has raised the question as to what level of scrutiny applies to a challenge to a statute pursuant to the Second Amendment to the United States Constitution. (Pla.'s Motion at pp. 10-11, ECF No. 51-1; Def.'s Motion at p. 11, ECF No. 54-1).

Plaintiff argues both that the Hawaii state law is categorically unconstitutional because it prohibits a class of arms and that strict scrutiny should apply. (Pla.'s Motion at p. 15, ECF No. 51-1).

Defendant argues that intermediate scrutiny should apply. (Def.'s Motion at p. 11, ECF No. 54-1).

The amicus brief also argues that intermediate scrutiny should apply. (Amicus Brief at p. 12-14, ECF No. 62-1).

III. Second Amendment Case Pending Before The United States Supreme Court

The United States Supreme Court has granted certiorari in New York State Rifle & Pistol Association, Inc. v. City of New York, 18-280.

It is set to hear oral arguments in the case on Monday, December 2, 2019.

In the briefing before the Supreme Court, the Parties have raised questions as to the level of scrutiny to apply in cases challenging a statute on grounds that it violates the Second Amendment.

Petitioner argues that the Supreme Court should apply "a tripartite binary test with a sliding scale and a reasonable fit" to find that strict scrutiny applies to Second Amendment challenges. (Petitioner's Brief at pp. 38-40, citing Duncan v. Becerra, 265 F.Supp.3d 1106, 1117 (S.D. Cal 2017), aff'd 742 F.App'x 218 (9th Cir. 2018)).

Respondent argues that the Second Circuit Court of Appeals properly applied "means-ends scrutiny" in the case and argues that intermediate scrutiny applies to Second Amendment challenges. (Respondent's Brief at pp. 36-37, citing District of Columbia v. Heller, 554 U.S. 570, 628-29 (2008)).

IV. Stay Proceedings Pending The Supreme Court Decision

Pursuant to the issues raised before the United States Supreme Court, the District Court elects to **STAY** the proceedings in this case pending the decision by the United States Supreme Court in New York State Rifle & Pistol Association, Inc. v. City of New York, 18-280.

Within 45 days of the decision by the United States Supreme Court, the Parties may file supplemental briefing concerning the appropriate level of scrutiny to apply to the Plaintiff's challenge to Hawaii Revised Statutes § 134-1.

Submitted by: Shelli Mizukami, Courtroom Manager